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CLERK U.S. DISTRICT COURT
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LOS ANGELES

BY _____

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

9 COLLEEN WITMER, Derivatively on Behalf)
10 of IXIA,)

11 Plaintiff,)

12 vs.)

13 VICTOR ALSTON, ATUL BHATNAGAR,)
14 THOMAS B. MILLER, ERROL GINSBERG,)
15 JONATHAN FRAM, LAURENT ASSCHER,)
16 GAIL HAMILTON, JON F. RAGER,)
17 CHRISTOPHER LEE WILLIAMS, ALAN)
18 GRAHAME, RAYMOND DE GRAAF,)
19 COLSTON H. WALKER II, RONALD W.)
20 BUCKLY,)

21 Defendants,)

22 -- and --)

23 IXIA,)

24 Nominal Defendant.
25
26
27
28

Case No.

CV 13-09359 -RGK
(FFMx)
VERIFIED SHAREHOLDER DERIVATIVE
COMPLAINT FOR BREACH OF
FIDUCIARY DUTY, GROSS
MISMANAGEMENT, ABUSE OF
CONTROL, UNJUST ENRICHMENT AND
VIOLATIONS OF CAL. CORP. CODE
§§25402/25502.5

DEMAND FOR JURY TRIAL

SHAREHOLDER DERIVATIVE COMPLAINT

1
2 1. Plaintiff Colleen Witmer (“Plaintiff”), by and through her undersigned attorneys, hereby
3 submits this Verified Shareholder Derivative Complaint for Breach of Fiduciary Duty, Gross
4 Mismanagement, Abuse of Control and Unjust Enrichment (the “Complaint”) for the benefit of nominal
5 defendant Ixia (“Ixia” or the “Company”) against certain members of its Board of Directors (the
6 “Board”) and executive officers seeking to remedy defendants’ breaches of fiduciary duties and unjust
7 enrichment from 2010 to the present (the “Relevant Period”).

8 2. According to its public filings, Ixia develops amazing products so its customers can
9 connect the world. Ixia helps its customers provide an always-on user experience through fast, secure
10 delivery of dynamic, connected technologies and services. Through actionable insights that accelerate
11 and secure application and service delivery, Ixia’s customers benefit from faster time to market,
12 optimized application performance and higher-quality deployments.

13 3. The true facts, which were known by defendants, but were undisclosed during the
14 Relevant Period, were as follows:

15 (a) that defendants improperly recognized revenues related to the Company’s
16 warranty and software maintenance contracts;

17 (b) that defendants “misstated” defendant Alston’s¹ academic credentials and
18 employment history;

19 (c) that defendants’ 2013 statements regarding the Company’s financial projections
20 were false and misleading;

21 (d) that defendants caused the Company to lack adequate internal and financial
22 controls; and

23 (e) that defendants caused the Company’s financial statements and filings with the
24 United States Securities and Exchange Commission (“SEC”) to be materially false and misleading at all
25 relevant times.

26
27 ¹ Defined further herein.

1 actionable insights that accelerate and secure application and service delivery, Ixia's customers benefit
2 from faster time to market, optimized application performance and higher-quality deployments.

3 11. Defendant Victor Alston ("Alston") served as the Company's President and Chief
4 Executive Officer ("CEO") from May 2012 until his "resignation" on October 24, 2013. Previously,
5 Alston served as the Company's Chief Operating Officer ("COO") and Senior Vice President of
6 Product Development. Defendant Alston joined Ixia in August 2004, serving as its Vice President of
7 Application Development at that time. Upon information and belief, defendant Alston is a citizen of
8 California.

9 12. Defendant Atul Bhatnagar ("Bhatnagar") served as the Company's President and CEO
10 from March 2008 until May 2012. Upon information and belief, defendant Bhatnagar is a citizen of
11 California.

12 13. Defendant Thomas B. Miller ("Miller") has served as the Company's Chief Financial
13 Officer ("CFO") since March 2000. Upon information and belief, defendant Miller is a citizen of
14 California.

15 14. Defendant Errol Ginsberg ("Ginsberg"), a founder of the Company, serves as the
16 Chairman of the Board, Acting CEO and Chief Innovation Officer. Ginsberg has served as Chairman of
17 the Board since January 2008. Previously, Ginsberg served as the Company's President from 1997
18 until 2000, and as CEO from 2000 until 2007. Upon information and belief, defendant Ginsberg is a
19 citizen of California.

20 15. Defendant Jonathan Fram ("Fram") has served as a director of the Company since July
21 2005. In addition, defendant Fram served as Chair of the Board's Audit Committee (the "Audit
22 Committee") during the Relevant Period. Upon information and belief, defendant Fram is a citizen of
23 California.

24 16. Defendant Laurent Asscher ("Asscher") has served as a director of the Company since
25 October 2008. In addition, defendant Asscher served as a member of the Audit Committee during the
26 Relevant Period. Upon information and belief, defendant Asscher is a citizen of Belgium.

1 17. Defendant Gail Hamilton ("Hamilton") has served as a director of the Company since
2 July 2005. In addition, defendant Hamilton served as a member of the Audit Committee during the
3 Relevant Period. Upon information and belief, defendant Hamilton is a citizen of California.

4 18. Defendant Jon F. Rager ("Rager") served as a director of the Company from May 1997
5 until June 19, 2013, and previously served as the Company's CFO from June 1997 until March 2000.
6 In addition, defendant Rager served as a member of the Audit Committee during the Relevant Period.
7 Upon information and belief, defendant Rager is a citizen of California.

8 19. Defendant Christopher Lee Williams ("Williams") serves as the Company's Vice
9 President ("VP") Human Resources. Upon information and belief, defendant Williams is a citizen of
10 California.

11 20. Defendant Alan Grahame ("Grahame") serves as Senior VP, Worldwide Sales. Upon
12 information and belief, defendant Grahame is a citizen of California.

13 21. Defendant Raymond de Graaf ("de Graaf") serves as the Company's VP, Operations.
14 Upon information and belief, defendant de Graaf is a citizen of California.

15 22. Defendant Colston H. Walker II ("Walker") serves as the Company's VP, Support.
16 Upon information and belief, defendant Walker is a citizen of California.

17 23. Defendant Ronald W. Buckly ("Buckly") serves as the Company's Senior VP, Corporate
18 Affairs, General Counsel and Corporate Secretary. Upon information and belief, defendant Buckly is a
19 citizen of California.

20 24. Collectively, defendants Alston, Bhatnagar, Miller, Ginsberg, Fram, Asscher, Hamilton,
21 Rager, Williams, Grahame, de Graaf, Walker and Buckly shall be referred to herein as the
22 "Defendants."

23 25. Collectively, defendants Fram, Asscher, Hamilton and Rager shall be referred to herein
24 as "Audit Committee Defendants."

25 26. Collectively, defendants Alston, Miller, Ginsberg, Hamilton, Rager, Williams, Grahame,
26 de Graaf, Walker and Buckly shall be referred to herein as the "Insider Selling Defendants."

27. The true names and capacities of defendants sued herein under California Code of Civil Procedure §474 as Does 1 through 25, inclusive, are presently not known to Plaintiff, who therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this Complaint and include these Doe defendants' true names and capacities when they are ascertained. Each of the fictitiously named defendants is responsible in some manner for the conduct alleged herein and for the injuries suffered by the Company as a result of defendants' wanton and illegal conduct.

DEFENDANTS' DUTIES

28. By reason of their positions as officers, directors, and/or fiduciaries of Ixia and because of their ability to control the business and corporate affairs of Ixia, Defendants owed Ixia and its shareholders fiduciary obligations of good faith, loyalty, and candor, and were and are required to use their utmost ability to control and manage Ixia in a fair, just, honest, and equitable manner. Defendants were and are required to act in furtherance of the best interests of Ixia and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit. Each director and officer of the Company owes to Ixia and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

29. Defendants, because of their positions of control and authority as directors and/or officers of Ixia, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein. Because of their advisory, executive, managerial, and directorial positions with Ixia, each of the Defendants had knowledge of material non-public information regarding the Company.

30. To discharge their duties, the officers and directors of Ixia were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of Ixia were required to, among other things:

(a) Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;

(b) Exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority; and

(c) When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

31. Pursuant to the Audit Committee's Charter, the members of the Audit Committee are required, *inter alia*, to:

(a) Review the adequacy and effectiveness of the Company's system of internal controls and disclosure controls and procedures;

(b) Review and discuss with management and the independent auditors the annual audited financial statements and quarterly unaudited financial statements;

(c) Review before the release the unaudited quarterly operating results in the Company's quarterly earnings release;

(d) Discuss at least annually with the Company's legal counsel the effectiveness of the Company's legal compliance programs, any legal matters that may have a material impact on the Company's financial statements and any material reports or inquiries received from regulators or governmental agencies.

SUBSTANTIVE ALLEGATIONS

32. According to its public filings, Ixia develops amazing products so its customers can connect the world. Ixia helps its customers provide an always-on user experience through fast, secure delivery of dynamic, connected technologies and services. Through actionable insights that accelerate and secure application and service delivery, Ixia's customers benefit from faster time to market, optimized application performance and higher-quality deployments.

**DEFENDANTS' FALSE AND MISLEADING STATEMENTS ISSUED
DURING THE RELEVANT PERIOD**

33. On February 3, 2011, Defendants issued a press release announcing the Company's financial results for the fourth quarter and year ended December 31, 2010. The press release was entitled "Ixia Announces Record Revenue for Fourth Quarter and Fiscal Year 2010," and reported that total revenue for the fiscal year 2010 was \$276.8 million, an increase of 56 percent compared with \$178.0 million reported in fiscal year 2009. The press release reported net income for fiscal year 2010 of \$10.7 million, or \$0.16 per diluted share, compared with a net loss of \$44.2 million, or \$0.70 per share, in fiscal year 2009.

34. On March 4, 2011, Defendants caused the Company to file with the SEC its Form 10-K for the year ending December 31, 2010 (the "2010 10-K"). The 2010 10-K was signed by defendants Bhatnagar, Miller, Ginsberg, Fram, Asscher, Hamilton and Rager. In addition to repeating the fiscal year 2010 financial results set forth in the press release, the 2010 10-K contained certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX Certifications"), signed by defendants Bhatnagar and Miller, who stated:

I, [Atul Bhatnagar/Thomas B. Miller], certify that:

1. I have reviewed this Annual Report on Form 10-K of Ixia;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated

subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

* * *

In connection with the Annual Report of Ixia (the "Company") on Form 10-K for the period ended December 31, 2010 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Atul Bhatnagar, President and Chief Executive Officer of the Company, and Thomas B. Miller, Chief Financial Officer of the Company, certify, to the best of our knowledge, pursuant to Rule 13a-14(b) under the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

1
2 35. On February 2, 2012, Defendants reported the Company's financial results for the fourth
3 quarter and year ended December 31, 2011 in a press release. The press release stated that total revenue
4 for the 2011 fourth quarter was a record \$83.7 million, compared with \$77.8 million reported for the
5 2010 fourth quarter and \$77.3 million reported for the 2011 third quarter. The press release further
6 reported that total revenue for the fiscal year 2011 was \$308.4 million, an increase of 11 percent
7 compared with \$276.8 million reported for fiscal year 2010, and also reported net income for the 2011
8 fourth quarter of \$8.9 million, or \$0.12 per diluted share, compared with net income of \$5.8 million, or
9 \$0.08 per diluted share, for the 2010 fourth quarter.

10 36. Commenting on the Company's performance in Ixia's press release announcing fourth
11 quarter and year ended December 31, 2011 results, defendant Bhatnagar stated, "[r]ecord revenue and
12 bookings led a strong fourth quarter and finish to 2011."

13 37. On March 5, 2012, Defendants caused the Company to file with the SEC its Form 10-K
14 for the year ending December 31, 2011 (the "2011 10-K"). The 2011 10-K was signed by defendants
15 Bhatnagar, Miller, Ginsberg, Fram, Asscher, Hamilton and Rager. In addition to repeating the fiscal
16 year 2011 financial results announced in the press release, the 2011 10-K contained SOX Certifications,
17 signed by Bhatnagar and Miller, which were substantially similar to those set forth above.

18 38. On April 19, 2012, Defendants filed a press release announcing the Company's financial
19 results for the first quarter of 2012. The press release reported total revenue for the 2012 first quarter of
20 \$85.6 million, compared with \$78.5 million reported for the 2011 first quarter and \$83.7 million
21 reported for the 2011 fourth quarter, and net income for the 2012 first quarter of \$4.4 million, or \$0.06
22 per diluted share, compared with net income of \$7.1 million, or \$0.10 per diluted share, for the 2011
23 first quarter.

24 39. On May 2, 2012, Defendants caused the Company to file with the SEC a quarterly report
25 on Form 10-Q. The Form 10-Q was signed by defendants Bhatnagar and Miller, and reiterated the
26 financial results set forth in the April 19, 2012 press release. In addition, the Form 10-Q contained
27

1 SOX Certifications, signed by defendants Bhatnagar and Miller, which were substantially similar to
2 those set forth above.

3 40. On July 26, 2012, Defendants issued a press release announcing the Company's financial
4 results for the second quarter of 2012. The press release reported "record" total revenue for the 2012
5 second quarter of \$92.3 million, compared with \$69.0 million reported for the 2011 second quarter and
6 \$85.6 million reported for the 2012 first quarter, and net income for the 2012 second quarter of \$26.9
7 million, or \$0.33 per diluted share, compared with net income of \$0.5 million, or \$0.01 per diluted
8 share, for the 2011 second quarter.

9 41. On August 7, 2012, Defendants caused the Company to file with the SEC a quarterly
10 report on Form 10-Q. The Form 10-Q was signed by defendants Alston and Miller, and reiterated the
11 financial results set forth in the July 26, 2012 press release. In addition, the Form 10-Q contained SOX
12 Certifications, signed by defendants Alston and Miller, which were substantially similar to those set
13 forth above.

14 42. On October 24, 2012, Defendants issued a press release announcing the Company's
15 financial results for the third quarter of 2012. The press release reported total revenue for the 2012 third
16 quarter was \$109.6 million, compared with \$77.3 million reported for the 2011 third quarter and \$92.3
17 million reported for the 2012 second quarter, and net income for the 2012 third quarter of \$11.4 million,
18 or \$0.15 per diluted share, compared with net income of \$6.4 million, or \$0.09 per diluted share, for the
19 2011 third quarter.

20 43. On November 8, 2012, Defendants caused the Company to file with the SEC a quarterly
21 report on Form 10-Q. The Form 10-Q was signed by defendants Alston and Miller, and reiterated the
22 financial results set forth in the October 24, 2012 press release. In addition, the Form 10-Q contained
23 SOX Certifications, signed by defendants Alston and Miller, which were substantially similar to those
24 set forth above.

25 44. On January 14, 2013, Defendants issued a press release entitled "Ixia Increases Fourth
26 Quarter Guidance." This press release set forth, in relevant part:

1 **Ixia (Nasdaq: XXIA)** today announced that it is revising its revenue guidance range for
 2 the fourth quarter of 2012 and ***currently expects revenue to be in the range of \$123.5***
 3 ***million to \$124.5 million, above its previously stated guidance range of \$118 million***
 4 ***to \$122 million.*** Ixia also indicated that it expects fourth quarter combined revenue from
 5 its two recent acquisitions, Anue Systems, Inc. ("Anue") and BreakingPoint Systems,
 6 Inc. ("BreakingPoint"), to be in the range of \$30 to \$31 million, compared with its
 7 previously stated guidance of \$26 to \$28 million. Both GAAP and non-GAAP diluted
 8 earnings per share for the fourth quarter are expected to be at, or slightly above, the high
 9 end of the previously given guidance.

7 "Ixia delivered an impressive fourth quarter with strong momentum across all of our
 8 solutions," commented Vic Alston, Ixia's president and chief executive officer. "The
 9 integration of our Anue and BreakingPoint acquisitions is tracking well and we are
 10 increasing our presence at enterprise and service provider accounts. Ixia is well
 11 positioned to help these customers accelerate and secure the delivery of applications
 12 over their mobile and data center networks." [Emphasis added.]

11 45. Following this press release, Ixia's stock rose. For example, Ixia stock increased from a
 12 closing price of \$17.66 per share on January 11, 2013 (the trading day immediately preceding the press
 13 release) to close at \$19.24 per share on January 14, 2013. On January 15, 2013, Ixia stock closed at
 14 \$20.74 per share.

15 46. Over the next two months, the Insider Selling Defendants cashed in, selling their
 16 personally held or controlled Ixia stock while in possession of material, adverse, non-public
 17 information. This insider selling was detailed in an article published in an article in *WSJ* published on
 18 November 13, 2013 entitled "Executives Hit Sweet Spot on Stock Sales."² The relevant portion of the
 19 *WSJ* article set forth:

20 On Jan. 14, Ixia, a Calabasas, Calif., company that makes Internet testing equipment, said
 21 revenue for last year's fourth quarter would exceed earlier guidance. It cited better-than-
 22 expected performance at two recently purchased companies.

23 ***As the stock rose, insiders began selling. Over the next two months, eight senior***
 24 ***executives, including then CEO Victor Alston and the chairman and general counsel,***

25 ² Article available at:
 26 <http://online.wsj.com/news/articles/SB10001424052702303376904579135782687348574>

1 *sold a total of more than \$18.4 million of stock at an average price of \$20.96 a share. The*
 2 *sales exceeded what the firm's executives had sold during the previous seven years.*

3 *Then came a surprise. On April 11, Ixia lowered guidance for the first quarter, citing*
 4 *revenue-recognition problems. Revenues for 2010, 2011 and the first three quarters of*
 5 *2012 were restated. On April 30, the firm said earnings for the second quarter would*
 6 *likely miss analyst expectations. By May 1, its stock had fallen to \$14.51. If the insiders*
 7 *had sold at that point rather than when they did earlier in the year, they would have*
 8 *collected \$5.7 million less, a Journal analysis determined.*

9 It isn't clear when senior executives learned about the problems. An Ixia spokesperson and
 10 the insiders declined to comment on the trading.

11 On Oct. 24, Ixia said in a news release that Mr. Alston had resigned after the company
 12 determined he had misstated his age, academic credentials and employment history. Its
 13 chairman and founder, Errol Ginsberg, has taken over that position. [Emphasis added.]

14 47. On February 6, 2013, Defendants issued a press release reporting the Company's
 15 financial results for the fourth quarter and year ended December 31, 2012. The press release reported
 16 that total revenue for the 2012 fourth quarter was a record \$124.1 million, compared with \$83.7 million
 17 reported for the 2011 fourth quarter and \$109.6 million reported for the 2012 third quarter, and net
 18 income for the 2012 fourth quarter of \$4.6 million, or \$0.06 per diluted share, compared with net
 19 income of \$9.8 million, or \$0.14 per diluted share, for the 2011 fourth quarter.

20 48. The true facts, which were known by Defendants, but were undisclosed during the
 21 Relevant Period, were as follows:

22 (a) that Defendants caused the Company to improperly recognize revenues related to
 23 its warranty and software maintenance contracts;

24 (b) that Defendants "misstated" defendant Alston's academic credentials and
 25 employment history;

26 (c) that Defendants' 2013 statements regarding the Company's financial projections
 27 were false and misleading;

28 (d) that Defendants had caused the Company to lack adequate internal and financial
 controls; and

(e) that Defendants had caused the Company's financial statements filed with the
 SEC to be materially false and misleading at all relevant times.

The Truth Slowly Begins to Emerge

49. On March 19, 2013, the truth began to emerge that Ixia's revenues were not as grand and record breaking as Defendants had repeatedly stated and reported. On that day, Defendants announced that Ixia had filed with the SEC a Form 12b-25 relating to the Company's Annual Report on Form 10-K for the year ended December 31, 2012, and that Defendants needed to delay the filing of Ixia's Annual Report, "to correct an error related to the manner in which [Ixia] recognizes revenues for its warranty and software maintenance contracts."

50. Then on April 3, 2013, Defendants announced that after a further evaluation of the Company's finances, and identifying an additional error in the Company's revenue recognition practices that required correction, the Company's management recommended to the Audit Committee that the Company restate previously issued financial statements for the fiscal years ended December 31, 2011 and 2010, and the fiscal quarters ended March 31, 2011, June 30, 2011, September 30, 2011, March 31, 2012, June 30, 2012, and September 30, 2012 (the, "Restated Periods"); and, that the financial statements from the Restated Periods should no longer be relied upon.

51. On this news, the Company's shares declined \$1.94 per share, or over 9.5%, to close on April 4, 2013, at \$18.37 per share.

52. On April 8, 2013, Defendants issued a press release announcing the filing of Ixia's restated financial statements. The press release stated the following in relevant part:

As part of the 2012 Form 10-K, Ixia has completed the restatement of its previously issued consolidated financial statements for the years ended December 31, 2010 and 2011, its unaudited quarterly financial information for each of the quarters and year-to-date periods in the year ended December 31, 2011 and in the nine months ended September 30, 2012, and its selected financial data for the years ended December 31, 2008 and 2009. With the filing of its 2012 Form 10-K, Ixia is now current in its filings of periodic reports with the Commission.

The restated consolidated financial statements correct certain errors that existed in Ixia's previously issued consolidated financial statements, principally related to the manner in which the Company recognized revenues related to its warranty and software maintenance contracts, including a previous implied warranty and software maintenance arrangement with one of the Company's customers. The related changes in the Company's revenue recognition practices will generally result in a shift of revenues between accounting periods in our previously issued financial statements. The changes

will not have any impact on the total revenues recognized over the life of a warranty and software maintenance contract or arrangement, although the timing of the recognition of such revenues will generally commence earlier and end earlier than was reflected in our previously issued financial statements for the restated periods. While the Company has made certain restatement adjustments that affect revenues, operating results, and deferred revenues for each of the restated periods, the restatement adjustments do not affect the total revenues ultimately earned or to be earned, or the amount or timing of cash received or to be received, from individual sales transactions. Accordingly, the restatement adjustments do not affect the Company's liquidity or overall cash flow for any prior period.

53. On April 30, 2013, Defendants issued a press release announcing the Company's financial results for the first quarter ended March 31, 2013. Defendants announced that total revenue for the 2013 first quarter was \$122.76 million, compared with \$86.73 million reported for the 2012 first quarter, and net income for the 2013 first quarter of \$8.1 million, or \$0.11 per diluted share, compared with net income of \$5.2 million, or \$0.07 per diluted share, for the 2012 first quarter.

54. During a conference call that same day, Defendants issued second quarter 2013 revenue guidance of between \$119 to \$122 million.³

55. On July 8, 2013, Defendants issued a press release announcing certain preliminary financial results for the second quarter ended June 30, 2013. Therein, Defendants *lowered* the Company's previously issued revenue guidance from April 30, 2013. The press release stated the following in relevant part:

Total revenue for the second quarter of 2013 is expected to be in the range of \$114 million to \$116 million, below the company's previous guidance of \$119 million to \$122 million. Revenue from Ixia's 2012 acquisitions, Anue Systems, Inc. ("Anue") and BreakingPoint Systems, Inc. ("BreakingPoint"), is expected to be at the high end of the previously given range of \$28 million to \$32 million.

"We are disappointed with our topline performance this quarter, which was impacted by several factors, including lower than expected revenue from network equipment manufacturers and certain service providers as customers extended review cycles and certain large deals that were pushed into future quarters," said Vic Alston, president and CEO of Ixia.

³ See <http://www.reuters.com/finance/stocks/XXIA.OQ/key-developments/article/2746791>

1 “We did, however, see several positive trends in the quarter. Sales to our two largest
2 customers, AT&T and Cisco, were strong and in line with expectations, and our overall
3 book-to-bill ratio was in excess of one. Additionally, the performance of our 2012
4 acquisitions, Anue and BreakingPoint, was very encouraging and revenue is expected to
5 register at the high end of our expectations for the second quarter. These indicators give
6 us confidence that our competitive position remains strong although we remain cautious
7 about the near-term spending environment,” continued Alston. [Emphasis added.]

8 56. On this news, the Company’s shares declined \$3.44 per share, or over 19%, to close on
9 July 9, 2013, at \$14.30 per share.

10 57. On July 30, 2013, Defendants issued a press release announcing the Company’s financial
11 results for the second quarter ended June 30, 2013. The press release reported that total revenue for the
12 2013 second quarter was \$115.9 million, with net income of \$3.8 million, or \$0.05 per diluted share.

13 58. On October 24, 2013, after the market closed, Defendants disclosed that defendant
14 Alston “has resigned as [Ixia’s] President and CEO and as a member of its board of directors following
15 a determination by the Ixia audit committee that although he had attended Stanford University, he had
16 misstated his academic credentials, incorrectly claiming to have received a B.S. and a M.S. in Computer
17 Science, and had misstated his age and early employment history.”

18 59. On this news, the Company’s shares declined \$0.78 per share, or nearly 5%, to close on
19 October 25, 2013, at \$14.94 per share.

20 60. On November 21, 2013, Defendants filed with the SEC a Form 8-K, disclosing that due
21 to Defendants’ failure to file a Form 10-Q for the quarter ended September 30, 2013, the Company was
22 no longer in compliance with Nasdaq Listing Rules. The Form 8-K set forth, in relevant part:

23 On November 19, 2013, Ixia (the “Company”) received a notice (the “Nasdaq Notice”) from The NASDAQ Stock Market LLC (“Nasdaq”) stating that because the Company
24 had not yet filed its Quarterly Report on Form 10-Q for the quarter ended September 30, 2013 (the “Form 10-Q”), the Company no longer complies with the Nasdaq Listing
25 Rules and specifically with Nasdaq Listing Rule 5250(c)(1). Nasdaq Listing Rule 5250(c)(1) requires listed companies to timely file all required periodic financial reports
26 with the Securities and Exchange Commission (the “SEC”).

27 In a Form 12b-25 Notification of Late Filing filed by the Company with the SEC on
28 November 13, 2013 (the “Form 12b-25”), the Company reported that as a result of the recent resignation of Victor Alston, the Company’s former President and Chief
Executive Officer, the Company’s Audit Committee, with the assistance of independent counsel, is conducting an email review and performing additional procedures in order to

1 ensure the accuracy of its recording of financial information and appropriateness of its
 2 financial reporting. The Company also reported in the Form 12b-25 that these
 3 procedures need to be completed prior to the filing of the Form 10-Q, and that the
 4 Company expected to file the Form 10-Q by the extended deadline of November 18,
 2013. As announced by the Company in a press release issued on November 18, 2013,
 however, the Company was unable to file the Form 10-Q by the extended deadline.

5 The Nasdaq Notice provides that the Company has 60 calendar days from the date
 6 thereof to submit to Nasdaq a plan to regain compliance with the Listing Rules. The
 7 Company intends to submit a plan to regain compliance within the 60-day period. If
 8 Nasdaq accepts the Company's plan, then Nasdaq may grant the Company up to 180
 days from the prescribed due date for filing the Form 10-Q (i.e., until May 19, 2014) to
 regain compliance. If Nasdaq does not accept the Company's plan, then the Company
 will have the opportunity to appeal that decision to a Nasdaq Hearings Panel.

9
 10 61. As a result of the foregoing, the Company has been damaged.

11 The Illicit Insider Sales

12 62. As set forth above, in a period of just over one month (between early February 2013 and
 13 the middle of March 2013), and while in possession of material, adverse non-public information, the
 14 Insider Selling Defendants, which included a majority of the members of the Board (namely Ginsberg
 and Hamilton), illicitly sold 923,675 shares of their personally held or controlled Company stock at
 15 artificially inflated prices, collectively reaping proceeds of *over \$19 million*. In addition, and as set
 16 forth above, *WSJ* observed that these sales exceeded what the Insider Selling Defendants had sold
 17 during the previous *seven years*.

18 63. These illicit insider sales by the Insider Selling Defendants break down as follows:

19 Date	20 Defendant	Shares	Sale price	Proceeds (\$)
21 Mar 11, 2013	Hamilton	7,500	Sale at \$21.81 per share.	163,575
22 Mar 8, 2013	Buckly	40,000	Sale at \$21.66 per share.	866,400
23 Mar 8, 2013	Buckly	15,000	Sale at \$21.68 - \$21.8 per share.	326,000
24 Mar 6, 2013	Alston	45,754	Sale at \$21.50 - \$22 per share.	995,000
25 Mar 6, 2013	Buckly	60,000	Sale at \$21.68 - \$22.25 per share.	1,318,000
26 Mar 5, 2013	Miller	14,345	Sale at \$21.15 per share.	303,396
27 Mar 5, 2013	Grahame	44,687	Sale at \$20.90 per share.	933,958
28 Mar 5, 2013	Colston	7,500	Sale at \$21.24 per share.	159,300

1	Mar 5, 2013	Buckly	26,669	Sale at \$21.07 - \$21.28 per share.	565,000
2	Mar 4, 2013	Miller	810	Sale at \$20.78 per share.	16,831
3	Mar 1, 2013	Grahame	5,157	Sale at \$20.08 per share.	103,552
4	Feb 28, 2013	Colston	10,000	Sale at \$19.88 per share.	198,799
5	Feb 25, 2013	Miller	2,660	Sale at \$20.37 - \$20.4 per share.	54,000
6	Feb 19, 2013	Buckly	13,438	Sale at \$21.06 per share.	283,004
7	Feb 19, 2013	Alston	2,003	Sale at \$20.90 per share.	41,862
8	Feb 19, 2013	De Graaf	9,343	Sale at \$20.94 - \$20.99 per share.	196,000
9	Feb 19, 2013	Williams	678	Sale at \$20.90 per share.	14,170
10	Feb 19, 2013	Grahame	1,142	Sale at \$20.90 per share.	23,867
11	Feb 19, 2013	Colston	595	Sale at \$20.90 per share.	12,435
12	Feb 19, 2013	Miller	2,252	Sale at \$20.90 - \$20.99 per share.	47,000
13	Feb 15, 2013	Grahame	17,812	Sale at \$21.13 per share.	376,367
14	Feb 15, 2013	Miller	500	Sale at \$21.29 per share.	10,645
15	Feb 14, 2013	Colston	17,500	Sale at \$21.17 per share.	370,475
16	Feb 14, 2013	Buckly	43,400	Sale at \$21.25 - \$21.26 per share.	922,000
17	Feb 13, 2013	Ginsberg	25,616	Sale at \$21.02 per share.	538,448
18	Feb 13, 2013	Colston	19,022	Sale at \$21.20 - \$21.25 per share.	404,000
19	Feb 13, 2013	Grahame	15,000	Sale at \$21.20 per share.	318,000
20	Feb 12, 2013	Buckly	72,000	Sale at \$21.05 - \$21.15 per share.	1,519,000
21	Feb 12, 2013	Ginsberg	49,384	Sale at \$21.09 per share.	1,041,508
22	Feb 11, 2013	Colston	17,555	Sale at \$20.50 - \$20.51 per share.	360,000
23	Feb 11, 2013	De Graaf	70,312	Sale at \$20.50 - \$20.51 per share.	1,442,000
24	Feb 11, 2013	Miller	2,450	Sale at \$20.60 - \$20.67 per share.	51,000
25	Feb 11, 2013	Buckly	26,900	Sale at \$20.55 - \$20.62 per share.	554,000
26	Feb 8, 2013	Buckly	73,100	Sale at \$20.53 - \$20.81 per share.	1,511,000
27	Feb 8, 2013	Miller	11,724	Sale at \$20.20 - \$20.55 per share.	239,000
28	Feb 8, 2013	Grahame	20,000	Sale at \$20.89 per share.	417,800
	Feb 8, 2013	Rager	15,000	Sale at \$20.47 per share.	307,050
	Feb 8, 2013	Rager	22,867	Sale at \$20.40 per share.	466,486
	Feb 8, 2013	Williams	94,000	Sale at \$20.05 per share.	1,884,699
	Totals:		923,675		\$19,355,627

DERIVATIVE AND DEMAND ALLEGATIONS

64. Plaintiff brings this action derivatively in the right and for the benefit of Ixia to redress the breaches of fiduciary duty and other violations of law by Defendants.

65. Plaintiff will adequately and fairly represent the interests of Ixia and its shareholders in enforcing and prosecuting its rights.

66. The Board currently consists of the following four (4) directors: defendants Ginsberg, Asscher, Fram and Hamilton. Plaintiff has not made any demand on the present Board to institute this action because such a demand would be a futile, wasteful and useless act, for the following reasons:

(a) Defendants Ginsberg and Hamilton (a majority of the Board) each illicitly sold shares of Ixia stock while in possession of material, non-public adverse information, during a time in which Ixia stock was artificially inflated due to Defendants' false and misleading statements. As a result of these illicit sales, defendants Ginsberg and Hamilton each received direct financial benefits not shared with Ixia shareholders, and are therefore each directly interested in a demand. Further, defendants Ginsberg and Hamilton each are interested in a demand because they face a substantial likelihood of liability for their breaches of fiduciary duties of loyalty and good faith. Accordingly, demand upon a majority of the members of the Board is excused, and demand is therefore futile.

(b) During the Relevant Period, defendants Asscher, Fram and Hamilton (a majority of the Board) served as members of the Audit Committee. Pursuant to the Company's Audit Committee Charter, the members of the Audit Committee were and are responsible for, *inter alia*, reviewing the Company's annual and quarterly financial reports and reviewing the integrity of the Company's internal controls. Defendants Asscher, Fram and Hamilton breached their fiduciary duties of due care, loyalty, and good faith, because the Audit Committee, *inter alia*, allowed or permitted the Company to disseminate false and misleading statements in the Company's SEC filings, particularly regarding the Company's accounting methods and defendant Alston's academic qualifications. Therefore, defendants Asscher, Fram and Hamilton each face a substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile.

(c) The principal professional occupation of defendant Ginsberg is his employment with Ixia as its Chief Innovation Officer and acting CEO, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits. In addition, according to the Company's Proxy Statement filed with the SEC on May 20, 2013 (the "2013 Proxy"), Defendants have admitted that defendant Ginsberg is not independent. Thus, defendant Ginsberg lacks independence from demonstrably interested directors, rendering him incapable of impartially considering a demand to commence and vigorously prosecute this action. In addition, defendant Ginsberg faces a substantial likelihood of liability for his illicit sales of Ixia stock, as set forth above.

(d) Defendants Ginsberg, Asscher, Fram and Hamilton (i.e. the entire Board) each signed the false and misleading 2010 10-K and the false and misleading 2011 10-K. The 2010 10-K and the 2011 10-K were false and misleading because (among other things) they misreported the Company's earnings and made false and misleading statements regarding the Company's internal controls. Therefore, Ginsberg, Asscher, Fram and Hamilton each face a substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile.

COUNT I

Against All Defendants for Breach of Fiduciary Duty for Disseminating False and Misleading Information

67. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

68. As alleged in detail herein, each of the Defendants (and particularly the Audit Committee Defendants) had a duty to ensure that Ixia disseminated accurate, truthful and complete information to its shareholders.

69. Defendants violated their fiduciary duties of care, loyalty, and good faith by causing or allowing the Company to disseminate to Ixia shareholders materially misleading and inaccurate information through, *inter alia*, SEC filings, press releases, conference calls, and other public statements and disclosures as detailed herein. These actions could not have been a good faith exercise of prudent business judgment.

Against All Defendants for Breach of Fiduciary Duties for Failing to Maintain Internal Controls

72. As alleged herein, each of the Defendants (and particularly the Audit Committee Defendants) had a fiduciary duty to, among other things, exercise good faith to ensure that the Company's financial statements were prepared in accordance with GAAP, and, when put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

74. As a direct and proximate result of the Defendants' foregoing breaches of fiduciary duties, the Company has sustained damages.

Against All Defendants for Unjust Enrichment

77. Plaintiff, as a shareholder and representative of Ixia, seeks restitution from Defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by Defendants, and each of them, as a result of their wrongful conduct and fiduciary breaches.

COUNT IV

Against All Defendants for Abuse of Control

78. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

79. Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence Ixia, for which they are legally responsible. In particular, Defendants abused their positions of authority by causing or allowing Ixia to misrepresent material facts regarding its financial position and internal controls.

80. As a direct and proximate result of Defendants' abuse of control, Ixia has sustained significant damages.

81. As a result of the misconduct alleged herein, Defendants are liable to the Company.

82. Plaintiff, on behalf of Ixia, has no adequate remedy at law.

COUNT V

Against All Defendants for Gross Mismanagement

83. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

84. Defendants had a duty to Ixia and its shareholders to prudently supervise, manage and control the operations, business and internal financial accounting and disclosure controls of Ixia.

85. Defendants, by their actions and by engaging in the wrongdoing described herein, abandoned and abdicated their responsibilities and duties with regard to prudently managing the businesses of Ixia in a manner consistent with the duties imposed upon them by law. By committing the misconduct alleged herein, Defendants breached their duties of due care, diligence and candor in the management and administration of Ixia's affairs and in the use and preservation of Ixia's assets.

86. During the course of the discharge of their duties, Defendants knew or recklessly disregarded the unreasonable risks and losses associated with their misconduct, yet Defendants caused Ixia to engage in the scheme complained of herein which they knew had an unreasonable risk of

1 damage to Ixia, thus breaching their duties to the Company. As a result, Defendants grossly
2 mismanaged Ixia.

3 **COUNT VI**

4 **Against The Insider Selling Defendants For Breach Of Fiduciary Duties For Insider Selling**
5 **And Misappropriation Of Information**

6 87. Plaintiff incorporates by reference and realleges each and every allegation set forth
7 above, as though fully set forth herein.

8 88. At the time of the stock sales set forth herein, the Insider Selling Defendants were in
9 possession of material, adverse, non-public information described above, and sold Ixia common stock
10 on the basis of such information.

11 89. The information described above was proprietary non-public information concerning the
12 Company's financial condition and future business prospects. It was a proprietary asset belonging to
13 the Company, which the Insider Selling Defendants used for their own benefit when they sold Ixia
14 common stock.

15 90. At the time of their stock sales, the Insider Selling Defendants knew that the Company's
16 projections were materially overstated and that Ixia's business prospects were much bleaker than what
17 was disclosed to the public. The Insider Selling Defendants' sales of Ixia common stock while in
18 possession and control of this material adverse, non-public information was a breach of their fiduciary
19 duties of loyalty and good faith.

20 91. Since the use of the Company's proprietary information for their own gain constitutes a
21 breach of the Insider Selling Defendants' fiduciary duties, the Company is entitled to the imposition of
22 a constructive trust on any profits the Insider Selling Defendants obtained thereby.

23 92. Plaintiffs on behalf of Ixia have no adequate remedy at law.

24 **COUNT VII**

25 **Against the Insider Selling Defendants for Violations of California Corporations Code**
26 **Sections 25402 and 25502.5**

27 93. Plaintiff incorporates by reference and realleges each and every allegation set forth
28 above, as though fully set forth herein.

94. At the time of the stock sales set forth herein, the Insider Selling Defendants, by reason of their high executive and/or directorship positions with Ixia, had access to highly material information regarding Ixia, including the information set forth herein regarding the Company's projections policies and lack of internal controls. While in possession of the material, adverse, non-public information described above, the Insider Selling Defendants collectively sold more than 923,000 shares of Ixia common stock held by them (or for their benefit) for proceeds of more than \$19 million.

95. At the time of the Insider Selling Defendants' stock sales, the materially adverse facts detailed herein were facts not generally available to the public or the securities markets. Had such information been generally available, it would have significantly reduced the market price of Ixia shares at that time.

96. The Insider Selling Defendants, and each of them, had actual knowledge of material, adverse, nonpublic information detailed above and thus sold their Ixia common stock in violation of California Corporations Code Section 25402.

97. Pursuant to California Corporations Code Section 25502.5, the Insider Selling Defendants, and each of them, are liable to Ixia for damages in an amount equal to up to three times the difference between the price at which Ixia common stock was sold by the Insider Selling Defendants, and each of them, and the market value which that Ixia common stock would have had at the time of the sale if the adverse information known to the Insider Selling Defendants, and each of them, had been publicly disseminated prior to that time and a reasonable time had elapsed for the market to absorb the information.

98. At all relevant times, Ixia common stock has been held by more than 500 shareholders of record. Ixia has assets in excess of \$1 million.

99. Plaintiff, on behalf of Ixia, has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Against all Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of Defendants' breaches of fiduciary duties;

1 B. Directing Ixia to take all necessary actions to reform and improve its corporate
2 governance and internal procedures to comply with applicable laws and to protect the Company and its
3 shareholders from a repeat of the damaging events described herein, including, but not limited to,
4 putting forward for shareholder vote resolutions for amendments to the Company's By-Laws or Articles
5 of Incorporation and taking such other action as may be necessary to place before shareholders for a
6 vote a proposal to strengthen the Board's supervision of operations and develop and implement
7 procedures for greater shareholder input into the policies and guidelines of the Board;

8 C. Awarding to Ixia restitution from Defendants, and each of them, and ordering
9 disgorgement of all profits, benefits and other compensation obtained by the Defendants;

10 D. Awarding to Plaintiff the costs and disbursements of the action, including reasonable
11 attorneys' fees, accountants' and experts' fees, costs, and expenses; and

12 E. Granting such other and further relief as the Court deems just and proper.

13 **JURY DEMAND**

14 Plaintiff demands a trial by jury.

15 DATED: December 19, 2013

THE WEISER LAW FIRM, P.C.
KATHLEEN A. HERKENHOFF (168562)

17 
18 KATHLEEN A. HERKENHOFF

19 12707 High Bluff Drive, Suite 200
20 San Diego, CA 92130
21 Telephone: (858) 794-1441
22 Facsimile: (858) 794-1450
kah@weiserlawfirm.com

23 THE WEISER LAW FIRM, P.C.
24 ROBERT B. WEISER
25 BRETT D. STECKER
26 CHRISTOPHER L. NELSON
27 22 Cassatt Avenue, First Floor
Berwyn, PA 19312
Telephone: (610) 225-2677
Facsimile: (610) 408-8062

28 Attorneys for Plaintiff

- 24 -

VERIFICATION

I, Colleen Witmer, under penalty of perjury, state as follows:

I am the Plaintiff in the above-captioned action. I have read the foregoing Complaint and authorized its filing. Based upon the investigation of my counsel, the allegations in the Complaint are true to the best of my knowledge, information and belief.

DATED: 12/12/13


Colleen Witmer

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge R. Gary Klausner and the assigned Magistrate Judge is Frederick F. Mumm.

The case number on all documents filed with the Court should read as follows:

2:13-CV-9359-RGK (FFMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

December 19, 2013

Date

By MDAVIS

Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:



Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012



Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701



Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) COLLEEN WITMER, Derivatively on Behalf of IXIA	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) VICTOR ALSTON, ATUL BHATNAGAR, THOMAS B. MILLER, ERROL GINSBERG, JONATHAN FRAM, LAURENT ASSCHER, GAIL HAMILTON, JON F. RAGER, CHRISTOPHER LEE WILLIAMS, ALAN GRAHAME, RAYMOND DE GRAAF, COLSTON H. WALKER II, RONALD W. BUCKLY and IXIA
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.) Kathleen A. Herkenhoff (168562) The Weiser Law Firm, P.C. 12707 High Bluff Drive, Suite 200 San Diego, CA 92130 Phone: (858) 794-1441	(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

II. BASIS OF JURISDICTION (Place an X in one box only.) <div style="display: flex; justify-content: space-between;"> <div style="width:48%;"> <input type="checkbox"/> 1. U.S. Government Plaintiff </div> <div style="width:48%;"> <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width:48%;"> <input type="checkbox"/> 2. U.S. Government Defendant </div> <div style="width:48%;"> <input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III) </div> </div>	III. CITIZENSHIP OF PRINCIPAL PARTIES -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border: none;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:47%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input checked="" type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)
☒ 1. Original Proceeding
☐ 2. Removed from State Court
☐ 3. Remanded from Appellate Court
☐ 4. Reinstated or Reopened
☐ 5. Transferred from Another District (Specify)
☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)
CLASS ACTION under F.R.Cv.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 28 U.S.C. Sections 1332(a)(2) and 1367(a), Shareholder Derivative Complaint for Breach of Fiduciary Duty, Gross Mismanagement, Abuse of Control, Unjust Enrichment

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	PERSONAL PROPERTY	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input checked="" type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	LABOR	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 790 Other Labor Litigation	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY:

Case Number: _____

CV13-09359

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF? Then check the box below for the county in which the majority of DEFENDANTS reside.	A DEFENDANT? Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
	<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western

Question C: Location of plaintiffs, defendants, and claims?	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies:

- ☐ 2 or more answers in Column C
- ☐ only 1 answer in Column C and no answers in Column D

Your case will initially be assigned to the SOUTHERN DIVISION.
Enter "Southern" in response to Question D, below.

If none applies, answer question C2 to the right. →

C.2. Is either of the following true? If so, check the one that applies:

- ☐ 2 or more answers in Column D
- ☐ only 1 answer in Column D and no answers in Column C

Your case will initially be assigned to the EASTERN DIVISION.
Enter "Eastern" in response to Question D, below.

If none applies, go to the box below. ↓

Your case will initially be assigned to the WESTERN DIVISION.
Enter "Western" in response to Question D below.

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Western Division

